NAME: MICHAEL CHUKWUEBUKA EZE

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QUESTION: The tort of trespass to Chattel in is made of: Trespass to Chattels, Conversion and Detinue. Discuss the above and support with case law. Students may consider the following: define and explain each tort. State the elements of Trespass to Chattel, conversion and detinue. Explain the concepts of innocent delivery or receipt, lost property rule and give examples of conversion. Give examples of persons qualified to sue for Trespass to Chattel. Discuss the remedies and defense to Trespass to Chattel, conversion and detinue. Differences between conversion and Detinue.

Trespass to Chattel

Trespass to Chattel refers to the direct and unlawful injury done to the chattel that is in possession of another person. It is a tort whereby the violating party has intentionally interfered with another person's lawful possession of a chattel. The interference can be any physical contact with the chattel in a manner deemed quantifiable, or any dispossession of the chattel. A Chattel in the sense could be any movable property, including land. When such injury occurs, one needs not prove damages but only, one needs not prove damages but only the proof of direct and unlawful application of force. In the case of **Armory vs Delamirie**; where a boy found a jewel and asked a goldsmith to value it. The goldsmith subsequently refused to return the jewel to the boy. Thus the boy sued. The court held that although the boy was not the true owner, the fact that he has possession of the goods gives him the right to sue for trespass. Thus, the goldsmith could not raise the issue of **jus tertii** meaning better title. This protects all the goods and all such personal properties of individuals who have possession and the right to immediate possession from damage and destruction by prohibiting all interferences that do not have legal justification.

Trespass to Chattel is actionable **Per Se,** in that the plaintiff is entitled to succeed. Trespass may occur without the infliction of physical damage by a mere asportation. Although it is known to be actionable **Per Se,** it is not a strict liability tort. As seen the case of **Kirk v Gregory**; where the movement of a deceased persons ring from one room to another was held to be trespass to chattel, thus damages were awarded to the defendant.

In the case of **Erivo v Obi;** where the defendant closed the door of the plaintiffs car, and the windscreen broke. The plaintiff sued the defendant for breaking the windscreen and also for the loss he incurred in hiring another car. The defendant pleaded inevitable accident. The Court of Appeal held that the defendant was not liable. This is due to the fact that he did not use excessive force but that of normal force when closing the door of the car. Therefore he did not break the window of the car negligently. The court also restated the position of the law stating that trespass to chattel is actionable **Per Se** which is that without proof of actual damage been done. Thus for trespass to chattel to be actionable, it must be done negligently or intentionally. This tort is closely related to other torts that protects the interests of personal property. When one refers to Trespass to chattel, firstly the act must be done intentionally or negligently including throwing another individuals phone away in annoyance, even moving someone property from one place to another, destruction or damage of such property, throwing something at the chattel, also to use someone else chattel without permission.

For a plaintiff to succeed in a trespass to chattel suit, he must prove that the act was intentional and negligent. The need to prove this is important as trespass to chattel is not a strict liability tort. And anyone is entitled to sue for trespass to chattel as long as they have possession or right to immediate possession can sue in other for them to protect their chattels under their care. They include owners, Lenders, Caretakers, Custodians, Assigners etc.

Inevitable accident, Jus tertii, Subsisting lien, Subsisting bailment, Limitation of time, and honest conversion can be used by the defendant as a defense in an action of trespass to chattel. That is, the title or a better right of a right of a third party, provided that he has the authority of such third party, which could also be as a result of expiration of time specified for legal action.

Remedies are also made available and awarded to parties whose chattels have been tampered with. Damages can and will be awarded to such persons, in some situations the chattel could be replaced and or repaired if severely damaged, and the market price of the chattel could be paid.

Conversion

Conversion refers to an intentional tort consisting of taking with the intent of exercising over the chattel an ownership inconsistent with the real owner's right of possession. Conversion occurs when one purposely interferes with another's personal property. Therefore the plaintiff must show that he owns or has the right to have the item at the time it's interfered with, also that the defendant's interference with it was intentional, and that the interference deprived the plaintiff of possession or use of the item, thus causing damages to the plaintiff. According to **Sir John Salmond**; “A conversion is an act of willful interference without lawful justification with any chattel in a manner inconsistent with the right of another, whereby that other individual is deprived of the use of possession of it”. In the case of **North Central Wagon and Finance Co Ltd vs Graham**, the defendant bought a car from the plaintiff on a hire purchase agreement. However, the defendant defaulted in payment. According to the terms of the contract, upon default, the plaintiff would be entitled to reclaim the goods. The defendant, without informing the plaintiff, auctioned the car. Thus the plaintiffs sued the auctioneer for conversion. The court held that the plaintiffs could sue in conversion regardless of the fact that the plaintiff didn’t have actual possession of the car at the time. Since the right of the goods were already vested in the plaintiff, there was no need for actual possession.

In the instance of wrongfully taking of a good as present in the case of in the case of **Fouldes vs Willoughby** the owner of two horses brought them aboard a ferry. In an ensuing argument, the ferryman told the horse owner to remove the horses but he refused. He then personally removed the horses and led them ashore. The horse owner sued for conversion. Judgment was entered in his favor at the trial court. On appeal, the court, in allowing the appeal held that the act of leading the horses away from his ferry by the ferryman could not be held to have amounted to conversion. This was due to the fact that the ferryman did not intend to assert a dominion of ownership over the horses. Also, in the case **Howard E Perry and Co Ltd vs British Railway Board.** The defendants who were carriers, held the plaintiff’s steel in depots. Subsequently, there was a strike by steelworkers and due to this, the defendants refused to release the plaintiff’s steel to them. It was held that this amounted to conversion on the defendant’s part.

For conversion to be committed there has to be some positive denial of possession towards the person entitled to possession.

For one to be successful in an action for conversion, they must prove that there was an intention to convert the tangible or intangible property of another to one's own possession and use, and the property in question is subsequently converted.

Innocent delivery is not conversion, Thus when an innocent carrier receives good in good faith from an individual who he believes has lawful possession of it, and then delivers them per the persons request to a third party, no conversion has occurred. Unless the receiver willfully damages the goods then it will amount to nuisance. In the case of **Unipetrol v Prima Tankers Ltd;** where the defendant oil tanker owners had a contract to carry Unipetrol's cargo of fuel from Port Harcourt. The captain of the vessel allegedly went elsewhere with the cargo of fuel. The plaintiff Unipetrol sued for the conversion and loss of the cargo. The Court of Appeal held: that the respondents were liable in conversion. The word "loss" is wide enough to include a claim for conversion against a carrier. It is elementary law that in a claim for conversion, the claimant is entitled to the return of the article seized, missing, or in the possession of the other party, or reimbursement for its value.

Detention or refusal to surrender possession constitutes conversion. The most common conversion is a refusal to surrender possession of the chattel to one who is entitled to it. Normally, this is judged to be a sufficiently serious interference with the plaintiff's right of control. If the detention is small or not deemed to be serious, it will not be considered a conversion. A garage which delays delivery of an automobile for 30 minutes does not commit a conversion. The same is true of a stock certificate. Placing furniture or other goods in storage to prevent damage or theft is also not a conversion, per se, if proper notice of its location is given to the owner. If the delay is long, or intentional, it is a conversion. Holding an automobile for a month is a conversion. Goods placed in storage or in bailment destroyed by fire are considered to have been converted. In 1704, it was stated in **Baldwin v Cole**: That the very denial of goods to him that has a right to demand them is an actual conversion, and not only evidence of it. Another notable example of conversion would be the wrongful use, loss or injury of the chattel. The use of or intermeddling with the property of another has often been held to constitute a conversion, whether the act is done by one who had no authority to use the property, or by one who has authority to use the property but uses it in an unauthorized way. Any unjustified exercise of dominion over property by one who is not the owner nor entitled to possession which interferes with the right of possession of another who is lawfully entitled thereto constitutes a conversion. According to the Restatement (Second) of Torts, one who uses a chattel in a manner which is a serious violation of the right of another to control its use is subject to liability to the other for conversion. A conversion may be predicated upon destruction of personal property. An action for conversion may lie for killing an animal or rendering a musical instrument useless. As seen in the case of **Petre v Heneage**; where it was held that, the mere using of a plaintiffs chattel as if it was their own amounted to conversion. Also when one uses the plaintiffs bottle to store wine amounts to conversion of the chattel.

In the case of **Parker v British Airways** it was known that the English Court of Appeal authoritatively settled the rules regarding finding of lost property. In that case, the plaintiff was waiting in the defendants airway lounge at the airport when he found a bracelet on the floor, which he then handed over to the employees along with his name and address with a request for it to be returned to him if it was unclaimed. I was not claimed and neither was it delivered to him but was sold. It was held that the proceeds of sale belonged to the founder. This thus gives rise to the first rule, which states that a finder of a chattel acquires no right over it unless it has been abandoned and he takes it into his acre and control.

The second rule states that any agent who finds a lost property in the course of his employment, does so on behalf of his employer, who by law acquires the right of a finder

The third rule states that any occupier of land or a building has superior rights to those of a finder over property or goods attached to the land. That being said in the case of **South Water CO v Sharman;** where rings found in a mud of pool belonged to the land owner. As well as in Elwes v Briggs where a prehistoric boat found six feet below surface belonged to the land owner.

The fourth rule also states that an occupier of premises does not have superior rights to those of a finderin respect of goods found in the premises**,** unless before the goods were found, the occupier has manifested an intention to exercise control over the premises.

An agent entrusted by a principal with the possession of goods is generally recognized as having a sufficient interest in the goods to enable him to maintain an action against a third person for a conversion. Some jurisdictions hold that the agent must have more than a mere right of possession. A similar result has been reached where the servant left the property in the possession of the defendant, who subsequently converted it. Where a sheriff attached chattels and delivered them for safekeeping to a person, the person was merely the sheriff's servant, and having no interest in the chattels, could not maintain an action for their conversion. Causes of action for conversion are generally assignable, so that the action may be instituted by the assignee. An officer in possession of property may ignore a conversion of the same by a wrongdoer and proceed to sell the property on execution, the purchaser then being permitted to sue the wrongdoer for the conversion of the property. A transferee of personal property, or interest therein, who acquires the right of possession by or through the transfer, may maintain an action for a conversion committed after the transfer, though he has not yet received actual possession of the goods. A creditor, having no interest, generally may not be a plaintiff in an action to retrieve a debtor's converted property. An owner of land may bring an action in conversion, but he must be in material possession of the land and of the property severed from the land at the time of the conversion. A Bailee of a chattel is entitled to sue for conversion of a chattel bailed to that person. Subsequently, a bailor has title to immediate possession of a good he has deposited with the bailee and can maintain an action for conversion. In the Winkfield case; where it was held that the owners of the Winkfield were liable and that as between a bailee and a stranger, possession gives title.

In a conversion suit, it is no defense to claim that the defendant was not negligent or that the defendant acquired the plaintiff's property through the plaintiff's unilateral mistake, or that the defendant acted in complete innocence and perfect good faith. The following may be used as a defense in a conversion suit;

Abandonment- Abandonment of the property before it was taken by the defendant is a complete defense. The abandonment should be demonstrated as the intent of the former owner. Also, there should be a reasonable time between the abandonment and the possession by the new owner.

Authority of law- A conversion cannot occur if it is done by authority of law, a court order or valid process. For example, the selling of the goods of a defendant by the claimant by an order of court in order to get a judgement, debt would be valid.

Consent or approbation- Consent by the plaintiff can be either express or implied.

Delay in bringing action- Statutes of limitations are defined by legislative jurisdiction. Some cases are based on "reasonable knowledge". Paintings purchased from a third person became the subject of an action in conversion, even though the incident had occurred 30 years prior. The action accrued based on when the plaintiff reasonably knew or should have known the identity of the possessor of the converted paintings.

Fraud of the plaintiff- Conveying property to a third person for purposes of evading creditors is a complete defense to a subsequent action in conversion.

Interest of defendant- If the defendant has ownership or partial ownership to the property, it cannot be converted. Cases revolve around the specific facts concerning ownership.

Subsisting bailment.

Subsisting lien.

Limitation of time.

There are multiple remedies allocated to the plaintiff as a remedy in the claim for conversion, which will be given by the courts discretion. They include the return or specific restitution of the good. An order for payment of any consequential damage could be issued. A plaintiff who suffers special damage can recover it.

Detinue

Detinue is an action to recover for the wrongful taking of personal property. This is usually initiated by an individual who claims to have a greater right to their immediate possession than the current possessor. For an action in detinue to succeed, a claimant must first prove that he had better right to possession of the chattel than the defendant and second that the defendant refused to return the chattel once demanded by the claimant, it refers to the wrong full detention of goods. It is the wrongful detention of the chattel of another person and the immediate possession of which the person is entitled. I n the case **of Ordia v Piedmont Nigeria Ltd (1995)**, the Supreme Court held that: “Detinue is a continuing cause of action which accrues at the date of the wrongful refusal to deliver up the goods and this continues until delivery of the goods or judgment in the action for detinue”. From the above decision of the Supreme Court, an action in detinue arises the moment that the person in possession of the goods refuses to surrender the goods or chattel in his custody.

The plaintiff must have title or ownership of the chattel. And the defendant who is in actual possession of the chattel must have failed in the part of delivering the chattel to the plaintiff after he made a proper demand for its return. These two conditions must be met by the plaintiff in order for his claim to be successful in an action for detinue. Where there is a subsiding lien on a property, a claim for detinue will not succeed as was held in **Shuwa v Chad Basin Development Authority.**

Since detinue is an action only in tort for failure to deliver up the plaintiff’s chattel and it entails claim for the return of the chattel or its value and damages for its detention, a plaintiff has three remedies open to him and it is up to him to decide which option of the following to take as follows:

1.Claim for value of the chattel and damages for its detention. The value of the chattel is as proved at the time of judgment at the trial court and the onus is on the plaintiff to prove the value. He is also to show by evidence the damage suffered by the detention.

2.Claim for the return of the chattel and damages for its detention.

3.Claim for the return of the chattel or its value as assessed and damages for its detention. This option appears to be the best form of action for if the chattel has otherwise been removed from jurisdiction or hidden away and out of the sight of the sheriff there is no alternative other than a distrait for the value of the chattel as assessed plus damages for its detention.

In an action for detinue a defendant could plead that he has mere possession of the goods, also that the plaintiff has insufficient title as compared to himself. Jus terii, which means or states that the third party has a better title provided that the defendant is the agent, or has the authority of the third party.

The most important distinctions between a cause of action in detinue and a cause of action in conversion are a product of historical accident.

**REFERENCES**

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